


# PATENT COOPERATION TREATY

## PCT

### INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference P728-PCT	<b>FOR FURTHER ACTION</b>		See Form PCT/PEA/416
International application No. PCT/JP2004/004282	International filing date ( <i>day/month/year</i> ) 26.03.2004	Priority date ( <i>day/month/year</i> ) 27.03.2003	
International Patent Classification (IPC) or national classification and IPC A23D9/00, A23L1/30			
Applicant SUNTORY LIMITED et al.			
<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 5 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input type="checkbox"/> <i>sent to the applicant and to the International Bureau</i> a total of sheets, as follows:</p> <p><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (<i>sent to the International Bureau only</i>) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>			
<p>4. This report contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the opinion</p> <p><input type="checkbox"/> Box No. II Priority</p> <p><input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p><input type="checkbox"/> Box No. IV Lack of unity of invention</p> <p><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p><input type="checkbox"/> Box No. VI Certain documents cited</p> <p><input type="checkbox"/> Box No. VII Certain defects in the international application</p> <p><input type="checkbox"/> Box No. VIII Certain observations on the international application</p>			
Date of submission of the demand  27.07.2004		Date of completion of this report  07.03.2005	
Name and mailing address of the international preliminary examining authority:  European Patent Office - P.B. 5818 Patentlaan 2 NL-2280 HV Rijswijk - Pays Bas Tel. +31 70 340 - 2040 Tx: 31 651 epo nl Fax: +31 70 340 - 3016		Authorized Officer  Rooney, K  Telephone No. +31 70 340-3931	



# INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.  
PCT/JP2004/004282

## Box No. I Basis of the report

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
  - ☐ This report is based on translations from the original language into the following language , which is the language of a translation furnished for the purposes of:
    - ☐ international search (under Rules 12.3 and 23.1(b))
    - ☐ publication of the international application (under Rule 12.4)
    - ☐ international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the **elements\*** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report):*

### Description, Pages

1-40 as originally filed

### Claims, Numbers

1-49 as originally filed

- ☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing

3. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/figs
- ☐ the sequence listing (*specify*):
- ☐ any table(s) related to sequence listing (*specify*):

4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/figs
- ☐ the sequence listing (*specify*):
- ☐ any table(s) related to sequence listing (*specify*):

\* If item 4 applies, some or all of these sheets may be marked "superseded."

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**Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

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1. Statement

Novelty (N)	Yes: Claims	
	No: Claims	1-49
Inventive step (IS)	Yes: Claims	
	No: Claims	1-49
Industrial applicability (IA)	Yes: Claims	1-49
	No: Claims	

2. Citations and explanations (Rule 70.7):

**see separate sheet**

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(SEPARATE SHEET)**

10/550711  
JC20 Rec'd PCT/PTO 26 SEP 2003  
International application No.

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**Re Item V.**

1 The following documents are referred to in this communication:

- D1 : DATABASE WPI Section Ch, Week 200301 Derwent Publications Ltd.,  
London, GB; Class B04, AN 2003-003195 XP002293655  
& JP 2002 180082 A (MARUHA CORP) 26 June 2002 (2002-06-26)
- D2 : WO 02/06505 A (HATA KAZUHIKO ; YAMANE TSUNEO (JP); FURIHATA  
KIYOMI (JP); ROXANA IRIME) 24 January 2002 (2002-01-24)
- D3 : WO 03/004667 A (FUJIKAWA SHIGEAKI ; HIGASHIYAMA KENICHI (JP);  
AKIMOTO KENGO (JP); SUNT) 16 January 2003 (2003-01-16)
- D4 : AKIKO KAWASHIMA ET AL: "Enzymatic synthesis of high-purity structured  
lipids with caprylic acid at 1,3-positions and polyunsaturated fatty acid at 2-  
position" JOURNAL OF THE AMERICAN OIL CHEMISTS' SOCIETY,  
AMERICAN OIL CHEMISTS' SOCIETY. CHAMPAIGN, US, vol. 78, no. 6,  
June 2001 (2001-06), pages 611-616, XP002957827 ISSN: 0003-021X
- D5 : NAMAL SENANAYAKE, S. P. J., AND SHAHIDI, F.: "Positional distribution  
of FA in TAG of enzymatically modified borage and evening primrose oils."  
LIPIDS, vol. 37, no. 8, 2002, pages 803-810, XP008034095 US  
CHAMPAIGN, IL
- D6 : JOURNAL OF NUTRITIONAL SCIENCE AND VITAMINOLOGY., vol. 45,  
1999, pages 411-421, XP002293654 JPUNIVERSITY OF TOKYO PRESS,  
TOKYO

**2. Novelty**

The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claim 1, 22, 44 and 49 is not new in the sense of Article 33(2) PCT.

The document D1 discloses a structured lipid having an omega 3 fatty acid in the second position its use in foods and for preparing a composition having a lipid improving action (see D1; abstract)

The document D2 discloses triglycerides with polyunsaturates in the sn-2 position and its use in foods (see D2; abstract)

The document D3 discloses a triglyceride having a polyunsaturated fatty acid in the sn-

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2 position and its use in foods (see D3; abstract).

The document D4 discloses the production of foods with lipid improving functions containing triglycerides with polyunsaturated fats in the sn-2 position and saturates in the sn1/3 positions (see D4; abstract and page 611).

The document D5 discloses a food oil compositions which have lipid improving function containing triglycerides having omega 3 and omega 6 fatty acids in the sn-2 position (see D5; page 803).

The document D6 discloses food oil compositions from fish which have a lipid improving function which comprises structured lipids having polyunsaturates in the sn-2 position (see D6; abstract)

**3. Dependent Claims**

Dependent claims 2-21, 23-43 and 45-48 do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of novelty and/or inventive step, as the features of these dependent claims have already been employed for the same purpose in similar compositions and processes (see whole document D1-D6).